NACHEEPPIA CHETTIAR v. GAN ENG KIAT

[O.C.J. (Suffian J.) January 31, 1965]

[Alor Star — Civil Reference No. 3 of 1964]

Procedure — Subordinate Courts Rules, 1950, O.1 r.2(1), O.36 rr.9(1) and 19 — R.S.C., O.70 r.1 — Power of President, Sessions Court to set aside judgment of predecessor — Moneylenders Ordinance, 1951, s.21(1) — Courts of Judicature Act, 1964, s.32.

The plaintiff had sued the defendant for money due and owing on a promissory note. The defendant who appeared in person admitted the claim and judgment was entered against him. It appeared that the plaintiff had not produced a statement of account at the time of suing and that the promissory note had not been attested. The defendant did not appeal but subsequently applied to the sessions court to have the judgment set aside. The learned president who had entered judgment earlier had been transferred and his successor set aside the judgment but subsequently reported the matter to the High Court.

Held: a president of a sessions court has no power to set aside the judgment of his predecessor.

Cases referred to:—

(1) *Arjan Singh* v. *Hashim Angullia & Ors.*, [1941] M.L.J. 55.

(2) *Ramasamy Chettiar* v. *Wong Poh Fatt* [1960] M.L.J. 43.

(3) *Ganapathy Chettiar* v. *Periakaruppan Chettiar & Anor.* [1962] M.L.J. 207.

CIVIL REFERENCE.

Plaintiff in person.

Khoo Soo Eng for the defendant.

Suffian J.: The plaintiff (respondent) sued the defendant (applicant) in the sessions court at Baling for money due and owing on a promissory note. The defendant who appeared in person admitted the claim and judgment was entered against him. It was subsequently said that the plaintiff had not produced a statement of his account as required by section 21(1) of the Moneylenders Ordinance No. 42 of 1951 at the time of suing and secondly that the promissory note had not been attested. But instead of applying for the summons to be set aside before judgment, as was done in *Arjan Singh* v. *Hashim Angullia & Ors.*,[1] at the hearing the defendant (as stated) admitted the claim and judgment was entered against him. That was on 5th January, 1963. If the defendant was dissatisfied he could have appealed to the High Court but did not. Then over six months later i.e. on 8th June, 1963, he returned to the sessions court, this time acting through counsel, to ask to have the judgment set aside. On this occasion a second president was sitting, the previous having been transferred to the legal department. Counsel argued that on the authority of *Arjan Singh's case* [1] and Order 36 rule 19 of the Subordinate Courts Rules which reads:

"Nothing in these Orders and Rules shall be deemed to limit or affect the inherent power of the Court to make such orders as may be necessary to prevent injustice or to prevent abuse of the process of the Court."

the president had power to set aside his predecessor's order. Accepting this argument the learned president set aside his predecessor's order with costs and gave leave for defence to be filed within two weeks.

Later the learned president had misgivings and reported this matter to me and in exercise of my power under section 32 of the Courts of Judicature Act, No. 7 of 1964, I summoned both parties to hear arguments.

Counsel for the defendant contended before me that the second president had power to set aside the order made by the first president on the ground, first, that the plaintiff had failed to produce a statement of his account when suing as required by the Moneylenders Ordinance and, secondly, the promissory note had not been attested and in support of his argument he relied on the cases of *Arjan Singh* v. *Hashim Angullia & Ors.*,[1] *Ramasamy Chettiar* v. *Wong Poh Fatt*,[2] *Ganapathy Chettiar* v. *Periakaruppan Chettiar & Anor.*,[3] Subordinate Courts Rules Order 36 rule 19 and rule 9(1), Order 1 rule 2(1) and Rules of the Supreme Court, Order 70 rule 1. I have studied these authorities and regret to hold that in my view there is nothing in any of them empowering the second president to set aside the judgment of his predecessor. I have also considered para 19 of the Third Schedule to the Courts Ordinance, 1948, and there also there is no power given to a president to set aside his predecessor's order. That paragraph merely empowers him to discharge, vary or suspend the operation of any of his judgments or orders.

In certain circumstances a judge of the High Court can set aside his own order but that is usually authorised by statute, for the general rule even in the High Court is that a court has no power to alter or vary a judgment after it has been entered or an order after it is drawn up. (See 1965 *White Book* page 465). My understanding is that the same general rule applies to the sessions court and no exception may be made except as authorised by law.

If the defendant had wanted to avail himself of *Arjan Singh's case*,[1] at the time of hearing he should not have admitted the plaintiff's claim; he should have applied to have the summons set aside whereupon on the authority of that case the learned president could have set it aside. The defendant did not do so. In view of his failure to appeal against that order of the learned president it is now too late for him to have it upset. I therefore have no alternative but to set aside the order made by the

second president. As a result the order of the first president springs back to life.

Order set aside.

Solicitor: *Chang Min Tat.*

LEMANIT v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Winslow J.) February 8, 1965]

[Singapore — Federal Court Criminal Appeal No. 57 of 1964]

Criminal Law — Causing a bomb to explode — Intent to cause physical injury to persons and property — Arms Offences Ordinance (Cap. 112), ss. 2 and 4.

Evidence — Confession — Whether statement of accused was a confession — Evidence Ordinance (Cap.4), s. 17(2).

The appellant was convicted of the offence of using an arm, to wit by causing a bomb to explode with intent to cause physical injury to persons and property. The evidence established an intent to injure property but did not establish a clear intent to injure persons. The prosecution relied on a confession made by the appellant and recorded by a magistrate. One of the principal grounds of appeal was that the statement was not a confession and should not have been admitted in evidence.

Held: (1) the failure to prove both the intents that is the intent to cause physical injury to person and property is not fatal to a conviction under section 4 of the Arms Offences Ordinance as proof of either intent would suffice and no substantial miscarriage of justice could be said to have occurred in this respect as far as the trial judge's direction to the jury was concerned;

(2) the statement made by the appellant in this case was clearly inculpatory and therefore the statement was rightly recorded and admitted in evidence as a confession.

Cases referred to:—

(1) *Pika Bewa* v. *Emperor* (1912) I.L.R. 39 Cal. 855.

(2) *Anandagoda* v. *Queen*, [1962] 1 W.L.R. 823.

FEDERAL COURT.

Kirpal Singh for the appellant.

Tan Boon Teik (Solicitor-General) for the Public Prosecutor.

Wee Chong Jin C.J. (Singapore): The appellant was charged before Chua J. sitting with a jury on 14th September, 1964 as follows:—

"That you, Lemanit bin Ahmad alias Hassan, on or about the 31st day of May, 1964, at about 8.38 p.m., at Royal Air Force Base, Changi (Technical Wing), Telok Paku Road, Singapore, did use an arm, to wit, by causing a bomb to explode with intent to cause physical injury to persons and property, and you have thereby committed an offence punishable under section 4 of the Arms Offences Ordinance (Chapter 112)".

At the conclusion of the trial on 23rd September, 1964 he was found guilty by the jury on a majority verdict of 5 to 2 with which the learned trial judge concurred and he was convicted accordingly.

After hearing submissions on the question of sentence which, for this particular offence is either imprisonment for life or a sentence of death, the learned judge sentenced him to death.

Counsel for the appellant preferred some eighteen grounds of appeal against the conviction and sentence which he submitted were unreasonable.

At the hearing of the appeal, he withdrew one ground of appeal thus leaving seventeen grounds which he proceeded to categorize under five main heads of appeal which may be summarised as follows:—

(a) that the learned trial judge failed to direct the jury that the charge against the appellant required proof of an intent on his part to cause physical injury both to persons and to property by causing the bomb in question to explode and that he misdirected the jury in directing them that the prosecution case was that the appellant had caused the bomb to explode with intent to cause injury to person or to property;

(b) that there was a misdirection in law and in fact on the ingredients required to prove the offence alleged by the prosecution and on the standard of proof required;

(c) that the learned trial judge misdirected the jury to the effect that the statement made by the appellant to the magistrate after his arrest was a confession (when it was merely a statement) and that they could act on it if they were satisfied that it was voluntarily made and that it was true;

(d) that there were misdirections of fact and of law relating to where certain exhibits were found, the evidence of certain witnesses, and on the inducement alleged by the appellant to have been held out to him;

(e) that the prosecution had failed to establish a *prima facie* case against the appellant at the close of the prosecution case.

Finally there were two of the usual type of grounds alleging that the verdict of the jury was unreasonable and could not be supported having regard to the evidence and that the sentence was excessive.

The case for the prosecution was that the appellant, accompanied by the prosecution witness, Hassan bin Ali (P.W.3), had been directed by the Indonesian Military Intelligence operating from Blakang Padang in the Rhio Archipelago to convey a bomb by stealth to Singapore and to explode it at the R.A.F. Base in Changi. The appellant was entrusted with this particular mission of exploding it.

On 30th May 1964, these two persons